

ANNIE BLUE

IBLA 74-329

Decided November 19, 1974

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting Alaska Native allotment application AA 7104.

Vacated and remanded.

1. Alaska: Native Allotments

The requirement of use and occupancy under the Alaska Native Allotment Act contemplates possession at least potentially to the exclusion of others and not mere intermittent use. The Native customs and mode of living must be considered as well as the climate and character of the land. In appropriate circumstances and/or where appellant so requests, the case will be remanded to permit appellant an opportunity to submit additional proof to demonstrate his use and occupancy. The burden is upon appellant to present clear and credible evidence.

APPEARANCES: James Grandjean, Esq., of the Alaska Legal Services Corporation, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

By decision of April 26, 1974, the Alaska State Office, Bureau of Land Management, rejected appellant's allotment application filed pursuant to the Alaska Native Allotment Act of May 17, 1906, as amended, 43 U.S.C. § 270-1 (1970), 1/ because of insufficient proof of use and occupancy.

1/ Repealed by sec. 18 of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. § 1617 (Supp. II, 1972), which preserved applications for Native allotments pending at that date.

[1] This case is similar to those cases involved in our decision, Maxie Wassillie, 17 IBLA 416(1974), wherein we held that the requirement of use and occupancy under the Alaska Native Allotment Act contemplates possession at least potentially to the exclusion of others and not mere intermittent use. We indicated that the Department must consider the customs and mode of living of Alaska Natives as well as the climate and character of the land. Further, we indicated that in appropriate circumstances and/or where an appellant so requests, a case would be remanded to the Bureau to permit an applicant a further opportunity to submit additional proof to demonstrate his use and occupancy, but that the applicant would have the burden to present clear and credible evidence of his or her entitlement to an allotment.

Because this case is similar to those we considered in Maxie Wassillie, supra, appellant will be afforded an opportunity to present additional information, if she desires.

Accordingly, pursuant to the authority delegated by the Secretary of the Interior to the Board of Land Appeals, 43 CFR 4.1, the decision appealed from is vacated and the case remanded to the Bureau in accordance with the principles and instructions set forth in our decision in Maxie Wassillie, supra.

Joan B. Thompson
Administrative Judge

We concur.

Martin Ritvo
Administrative Judge

Douglas E. Henriques
Administrative Judge

